

GLEN HOCKING

IBLA 80-572

Decided August 11, 1980

Appeal from letter decision of the Idaho State Office, Bureau of Land Management, declining to record mining claim IMC 48973.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally – Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment – Mining Claims: Recordation

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

2. Federal Land Policy and Management Act of 1976: Generally – Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment – Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office

within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

3. Notice: Generally – Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

APPEARANCES: Glen Hocking, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a letter decision dated March 14, 1980, declining to accept for recordation appellant's filings received October 18, 1979, for the Cornhuskers Nos. 1 through 4, and Blue Sky Nos. 1 through 4 mining claims. The text of the letter decision is as follows:

Dear Mr. Hocking:

Your "Amended Location" affidavit and "Proof of Labor" affidavit are being returned because we have not been able to associate the material with a pending recordation. If these items were sent to supplement a pending file, please return them with the appropriate corresponding IMC number. If the material was sent to record your mining claim, it should have been accompanied by a \$5.00 service fee and a map showing the exact location and outline of the claim.

The "Amended Location" affidavit did not include a date of location; however, if the claim was located on or before October 21, 1976 all the requirements must have been received in our office by October 22, 1979. If the claim was located after October 21, 1976, all the required information and service fees must have been received in our office within 90 days of the location.

Because both of these time limits have expired, we suggest that you complete new Location Notices with the current date you stake and locate the claim, if no one else has claimed the land and it is currently open to mineral entry. The new Location Notice must be received both in the county as well as the BLM within 90 days, along with the other specific requirements.

The file contains a "Proof of Labor" which is BLM date stamped October 18, 1979. It does not contain an "Amended Location" affidavit, nor does it disclose when appellant's claims were located.

On April 2, 1980, appellant submitted \$40 in recording fees for the eight claims, a map showing the locations of the claims, and an additional copy of the "Proof of Labor."

On appeal to this Board appellant states that his failure to comply with the recording procedures was due to his ignorance of the regulations.

Departmental regulations pertinent to this appeal provide in part as follows:

3833.1-2 Manner of recordation – Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law.

(b) The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site filed under state law * * *.

43 CFR 3833.1-2(c) requires a map, narrative or sketch to be filed. 43 CFR 3833.1-2(d) provides: "Each claim or site filed shall be accompanied by a one time \$5 service fee which is not returnable. A notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner." 43 CFR 3833.4(a) provides: "The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void."

[1, 2] The above regulations, implementing section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA) 43 U.S.C. § 1744(b) (1976), are mandatory and must be complied with. John Walter Chaney, 46 IBLA 229 (1980). For claims located on or before

October 21, 1976, the owner had until October 22, 1979, to record the location notice and related documents with BLM and pay the service charges. James E. Cooper, 48 IBLA 175 (1980). For claims located thereafter, these documents have to be recorded within 90 days of the date of location. Beryl Rhodes, 46 IBLA 287 (1980). Since the file does not reveal when appellant's claims were located, we cannot determine which of the provisions is applicable to appellant. Moreover, appellant's proof of labor is only a partial compliance with the regulations and does not obviate the need for filing a certificate of location. Failure to timely file the required materials is deemed conclusively to constitute an abandonment of the claims by the owner. James E. Cooper, *supra*. In the circumstances of this case, it is clear that whether the claims were located prior to, or after the enactment of FLPMA, there has been a failure to meet the requirements of the regulations thereunder.

[3] Appellant's ignorance of the requirements provides no exception to the rule that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); James E. Cooper, *supra*.

We note in closing that appellant may relocate these claims if for locatable minerals and file notice of this as provided in 43 CFR 3833.1, subject to any intervening rights of third parties, and assuming no intervening closure of the land to mining location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Joan B. Thompson
Administrative Judge

